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TD AMERITRADE, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JASON THOMAS, individually, and on) Case No. C08-02397 WDB
behalf of all others similarly situated,)
)
Plaintiff,)
) **TD AMERITRADE'S ANSWER TO**
) **COMPLAINT FOR DAMAGES,**
) **INJUNCTIVE RELIEF AND**
) **RESTITUTION**
)
vs.)
)
TD AMERITRADE, INC.,)
)
Defendant.)
)

Defendant TD Ameritrade, Inc. (“TD Ameritrade” or “Defendant”) hereby answers the allegations contained in Plaintiff Jason Thomas’s (“Mr. Thomas” or “Plaintiff”) Class Action Complaint for Damages, Injunctive Relief and Restitution (the “Complaint”) and admits, denies and alleges as follows. Defendant reserves the right to file appropriate amendments to this Answer, if necessary, if and when additional information is obtained.

PRELIMINARY STATEMENT

1. The allegations in Paragraph No. 1 of the Complaint state conclusions of law and class allegations to which no response is required. To the extent a response is required, TD Ameritrade denies the allegations in Paragraph No. 1, and in particular, denies that this action is appropriate for class action treatment.

1 7. TD Ameritrade denies the allegations in Paragraph 7 of the Complaint.

2 8. TD Ameritrade denies the allegations in Paragraph 8 of the Complaint.

3 9. TD Ameritrade admits that Investment Consultants were classified as
4 “exempt” and not paid premium hourly overtime wages. TD Ameritrade denies the
5 remaining allegations in Paragraph 9 of the Complaint.

6 10. TD Ameritrade denies the allegations in Paragraph 10 of the Complaint.

7
8 **JURISDICTION AND VENUE**

9 11. The allegations in Paragraph No. 11 of the Complaint state conclusions of
10 law to which no response is required. To the extent that a response is required, TD
11 Ameritrade admits that venue is proper in the Northern District of California pursuant
12 to 28 U.S.C. § 1391 and in any other District within California. TD Ameritrade further
13 admits that it maintains offices, transacts business, and has agents within the Northern
14 District of California and is within this Court’s jurisdiction for purposes of service of
15 process. TD Ameritrade further admits that it has employed Investment Consultants in
16 this judicial district and in other districts in California. Plaintiff’s allegation that TD
17 Ameritrade “operates said facilities and has employed numerous class members in this
18 judicial district as well as throughout the State of California” is imprecise and general in
19 nature and on that basis, TD Ameritrade denies that allegation. TD Ameritrade denies
20 the remaining allegations in Paragraph 11 of the Complaint.

21 **PLAINTIFF(S)**

22 12. TD Ameritrade admits that Plaintiff was employed by TD Ameritrade as
23 an Investment Consultant at one of TD Ameritrade’s California branch offices during
24 some portion of the alleged “class period.” TD Ameritrade denies the remaining
25 allegations in Paragraph No. 12 of the Complaint.

26 13. TD Ameritrade denies the allegations in Paragraph 13 of the Complaint.

27 14. The allegations in Paragraph 14 of the Complaint describe the definition
28 that Plaintiff has assigned to the terms “Plaintiff” and “class” as used in his Complaint

1 to which no response is required. To the extent that a response is required, TD
2 Ameritrade denies the allegations in Paragraph No. 14, and in particular, denies that
3 this action is appropriate for class action treatment.

4 15. TD Ameritrade admits that Plaintiff was employed as an Investment
5 Consultant by TD Ameritrade out of one of TD Ameritrade's California branch offices at
6 some point during the alleged "class period." TD Ameritrade denies, however, that this
7 action is appropriate for class action treatment.

8 **DEFENDANT**

9 16. TD Ameritrade admits that, at all times relevant to this suit, TD
10 Ameritrade was and is a corporation and/or other business entity, duly licensed, with
11 offices located in this judicial district and in other judicial districts in California. TD
12 Ameritrade further admits that it has offices or business locations in California. TD
13 Ameritrade denies the remaining allegations in Paragraph No. 16 of the Complaint.

14 17. The allegations contained in Paragraph No. 17 of the Complaint state
15 conclusions of law to which no response is required. To the extent that a response is
16 required, TD Ameritrade denies the allegations in Paragraph No. 17 of the Complaint.

17 **CLASS ACTION ALLEGATIONS**

18 18. The allegations in Paragraph No. 18 of the Complaint state conclusions of
19 law and class allegations to which no responses is required. To the extent that a
20 response is required, TD Ameritrade denies that this lawsuit is appropriate for class
21 action treatment or that the "class" as that term is defined in Plaintiff's Complaint is a
22 proper class.

23 19. The allegations in Paragraph No. 19 of the Complaint state Plaintiff's
24 intent to exclude TD Ameritrade, its officers and directors from the putative class
25 described in Paragraph No. 18 of the Complaint, to which no response is required. To
26 the extent that a response is required, TD Ameritrade denies that this lawsuit is
27 appropriate for class action treatment.

28 20. The allegations in Paragraph No. 20 of the Complaint and its subsections

1 state conclusions of law and class allegations to which no response it required. To the
2 extent that a response is required, TD Ameritrade denies the allegations in Paragraph
3 No. 20 and its subsections, and in particular, TD Ameritrade denies that this action is
4 appropriate for class action treatment.

5 **COMMON FACTUAL ALLEGATIONS**

6 21. TD Ameritrade admits that, at all times relevant to this action, TD
7 Ameritrade was aware of or on constructive notice of its responsibility to comply with
8 the statute identified in Paragraph No. 21 of the Complaint. TD Ameritrade denies,
9 however, that TD Ameritrade failed to comply with the statute identified at any time,
10 including the time relevant to this action.

11 22. TD Ameritrade denies the allegations in Paragraph No. 22 of the
12 Complaint.

13 23. TD Ameritrade denies the allegations in Paragraph No. 23 of the
14 Complaint.

15 24. TD Ameritrade denies the allegations in Paragraph No. 24 of the
16 Complaint.

17 25. The allegations in Paragraph No. 25 of the Complaint contain an alleged
18 paraphrasing of the California Labor Code (including §§ 201, 202 and 203) to which no
19 response is required. To the extent a response is required, TD Ameritrade responds that
20 the terms of the statutes speak for themselves and it denies that it violated these
21 statutes.

22 26. TD Ameritrade admits that because it classified its Investment
23 Consultants as "exempt" employees, it did not keep hourly records for its Investment
24 Consultants in the same manner that TD Ameritrade kept hourly time records for "non-
25 exempt" employees. TD Ameritrade further admits that because it classified its
26 Investment Consultants as "exempt" employees, it did not provide Investment
27 Consultants semimonthly statements reflecting the total number of hours worked and
28 the hourly rates in effect during that time period in the same manner that they provided

1 such information to “non-exempt” employees. The remaining allegations in Paragraph
2 No. 26 of the Complaint state conclusions of law to which no response is required. To
3 the extent that a response is required, TD Ameritrade denies the remaining allegations
4 in Paragraph No. 26.

5 27. TD Ameritrade denies the allegations in Paragraph No. 27 of the
6 Complaint.

7 28. TD Ameritrade admits that more than 30 days have passed since Plaintiff
8 left TD Ameritrade’s employ. TD Ameritrade further admits that more than 30 days
9 have passed since certain other Investment Consultants who fall within the alleged
10 “class,” as that term is defined in Plaintiff’s Complaint, left their employment with TD
11 Ameritrade.

12 29. TD Ameritrade denies the allegations in Paragraph No. 29 of the
13 Complaint.

14 30. TD Ameritrade denies the allegations in Paragraph No. 30 of the
15 Complaint.

16 31. Paragraph No. 31 of the Complaint states Plaintiff’s intent to seek certain
17 types of remedies to which no response is required. To the extent that a response is
18 necessary, TD Ameritrade denies that this lawsuit is appropriate for class action
19 treatment and denies that Plaintiff or members of the putative class action are entitled
20 to any relief whatsoever. TD Ameritrade denies the remaining allegations in Paragraph
21 No. 31.

22
23 **FIRST CLAIM FOR RELIEF**
24 **UNLAWFUL FAILURE TO PAY ALL WAGES DUE (INCLUDING OVERTIME)**
25 **(Violation of California Wage Order and California Labor Code)**

26 32. The allegations in Paragraph No. 32 of the Complaint reincorporate
27 previously asserted allegations and no additional response is required. To the extent a
28 response is required, TD Ameritrade denies any allegations not specifically admitted
elsewhere.

1 33. TD Ameritrade admits that Plaintiff and other members of the putative
2 class were employed by and did perform work for TD Ameritrade. TD Ameritrade denies
3 the remaining allegations in Paragraph No. 33 of the Complaint.

4 34. TD Ameritrade denies the allegations in Paragraph No. 34 of the
5 Complaint.

6 35. TD Ameritrade denies the allegations in Paragraph No. 35 of the
7 Complaint.

8 36. TD Ameritrade denies the allegations in Paragraph No. 36 of the
9 Complaint.

10 37. TD Ameritrade admits that, at all times relevant to this action, TD
11 Ameritrade was aware of or on constructive notice of its responsibilities to comply with
12 the statutes identified in Paragraph No. 37 of the Complaint. TD Ameritrade denies,
13 however, that it failed to comply with any of those statutes at any time, including the
14 time relevant to this action.

15 38. The allegations contained in Paragraph No. 38 of the Complaint state
16 conclusions of law to which no response is required. To the extent that a response is
17 required, TD Ameritrade denies the allegations in Paragraph No. 38 of the Complaint.

18 39. The allegations in Paragraph No. 39 of the Complaint state conclusions of
19 law and class allegations to which no response is required. To the extent a response is
20 required, TD Ameritrade denies the allegations in Paragraph No. 39, and in particular,
21 denies that this action is appropriate for class action treatment and denies that Plaintiff
22 or members of the putative class action are entitled to any relief whatsoever.

23
24 **SECOND CLAIM FOR RELIEF**
25 **FAILURE TO PROVIDE MEAL AND REST PERIODS**
26 **(California Labor Code §§ 226.7 and 512)**

27 40. The allegations in Paragraph No. 40 of the Complaint reincorporate
28 previously asserted allegations and no additional response is required. To the extent a
response is required, TD Ameritrade denies any allegations not specifically admitted

1 elsewhere.

2 41. TD Ameritrade admits that, at all times relevant to this action, TD
3 Ameritrade was aware of or on constructive notice of its responsibilities to comply with
4 the statutes identified in Paragraph No. 41 of the Complaint. TD Ameritrade denies,
5 however, that TD Ameritrade failed to comply with any of those statutes at any time,
6 including the time period relevant to this action.

7 42. The allegations in Paragraph No. 42 of the Complaint contain an alleged
8 quotation of California Labor Code § 226.7 to which no response is required. To the
9 extent a response is required, TD Ameritrade responds that the terms of the statute
10 speak for themselves.

11 43. The allegations in Paragraph No. 43 of the Complaint contain an alleged
12 quotation of California Labor Code § 512 to which no response is required. To the extent
13 a response is required, TD Ameritrade responds that the terms of the statute speak for
14 themselves.

15 44. TD Ameritrade admits that, at all times relevant to this action, TD
16 Ameritrade was aware of or on constructive notice of its responsibilities to comply with
17 the Wage Order identified in Paragraph No. 44 of the Complaint. TD Ameritrade
18 denies, however, that TD Ameritrade failed to comply with the Wage Order at any time,
19 including the time period relevant to this action.

20 45. The allegations in Paragraph No. 45 of the Complaint contain an alleged
21 quotation of Section 11 of the California Industrial Welfare Commission Wage Order to
22 which no response is required. To the extent a response is required, TD Ameritrade
23 responds that the terms of the Order speak for themselves.

24 46. The allegations in Paragraph No. 46 of the Complaint contain an alleged
25 quotation of Section 12 of the California Industrial Welfare Commission Wage Order to
26 which no response is required. To the extent a response is required, TD Ameritrade
27 responds that the terms of the Order speak for themselves.

28 47. The allegations in Paragraph No. 47 of the Complaint state conclusions of

1 law to which no response is required. To the extent that a response is required, TD
2 Ameritrade denies the allegations in Paragraph No. 47 of the Complaint.

3 48. TD Ameritrade denies that it has violated the California Labor Code and
4 IWC Wage Orders and on that basis denies the allegations in Paragraph No. 48 of the
5 Complaint.

6 49. The allegations in Paragraph No. 49 of the Complaint state conclusions of
7 law and class allegations to which no response is required. To the extent a response is
8 required, TD Ameritrade denies the allegations in Paragraph No. 49, and in particular,
9 denies that this action is appropriate for class action treatment and denies that Plaintiff
10 or members of the putative class action are entitled to any relief whatsoever.

11
12 **THIRD CLAIM FOR RELIEF**
13 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
14 **(California Labor Code §§ 226, 1174)**

15 50. The allegations in Paragraph No. 50 of the Complaint reincorporate
16 previously asserted allegations and no additional response is required. To the extent a
17 response is required, TD Ameritrade denies any allegations not specifically admitted
18 elsewhere.

19 51. The allegations in Paragraph No. 51 of the Complaint contain an alleged
20 quotation of California Labor Code § 226(a) to which no response is required. To the
21 extent a response is required, TD Ameritrade responds that the terms of the statute
22 speak for themselves.

23 52. The allegations in Paragraph No. 52 of the Complaint contain an alleged
24 quotation of California Labor Code § 226(e) to which no response is required. To the
25 extent a response is required, TD Ameritrade responds that the terms of the statute
26 speak for themselves.

27 53. TD Ameritrade admits that because it classified its Investment Consultants
28 as “exempt” employees, it did not keep hourly time records for Plaintiff or other
Investment Consultants in the same manner that TD Ameritrade kept hourly time

1 records for “non-exempt” employees. TD Ameritrade further admits that because it
2 classified its Investment Consultants as “exempt” employees, it did not provide Plaintiff
3 or other Investment Consultants semimonthly statements reflecting the total number of
4 hours worked and the hourly rates in effect during that time period in the same manner
5 they provided such information to “non-exempt” employees. TD Ameritrade denies the
6 remaining allegations in Paragraph No. 53 of the Complaint.

7 54. The allegations in Paragraph No. 54 of the Complaint state conclusions of
8 law and class allegations to which no response is required. To the extent a response is
9 required, TD Ameritrade denies the allegations in Paragraph No. 54, and in particular,
10 denies that this action is appropriate for class action treatment and denies that Plaintiff
11 or members of the putative class action are entitled to any relief whatsoever.

12
13 **FOURTH CLAIM FOR RELIEF**
14 **UNREIMBURSED BUSINESS EXPENSES**
15 **(California Labor Code § 2802)**

16 55. The allegations in Paragraph No. 55 of the Complaint reincorporate
17 previously asserted allegations and no additional response is required. To the extent a
18 response is required, TD Ameritrade denies any allegations not specifically admitted
19 elsewhere.

20 56. TD Ameritrade denies the allegations in Paragraph No. 56 of the
21 Complaint.

22 57. TD Ameritrade denies the allegations in Paragraph No. 57 of the
23 Complaint.

24 58. TD Ameritrade admits that, at all times relevant to this action, TD
25 Ameritrade was aware of or on constructive notice of its responsibilities to comply with
26 the statute identified in Paragraph No. 58 of the Complaint. TD Ameritrade denies,
27 however, that TD Ameritrade failed to comply with that statute at any time, including
28 the time period relevant to this action.

59. TD Ameritrade denies the allegations in Paragraph No. 59 of the

1 Complaint.

2 60. The allegations in Paragraph No. 60 of the Complaint contain an alleged
3 paraphrasing of California Labor Code § 2802 to which no response is required. To the
4 extent that a response is required, TD Ameritrade responds that the terms of the statute
5 speak for themselves.

6 61. The allegations in Paragraph No. 61 of the Complaint state Plaintiff and
7 putative class members' demand for reimbursement to which no response is required.
8 To the extent a response is required, TD Ameritrade denies the allegations in Paragraph
9 No. 61, and in particular, denies that this action is appropriate for class action
10 treatment and denies that Plaintiff or members of the putative class action are entitled
11 to any relief whatsoever.

12
13 **FIFTH CLAIM FOR RELIEF**
14 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**
15 **(California Business & Professions Code §§ 17200-17208)**

16 62. The allegations in Paragraph No. 62 of the Complaint reincorporate
17 previously asserted allegations and no additional response is required. To the extent a
18 response is required, TD Ameritrade denies any allegations not specifically admitted
19 elsewhere.

20 63. The allegations in Paragraph No. 63 of the Complaint state conclusions of
21 law to which no response is required. To the extent that a response is required, TD
22 Ameritrade denies the allegations in Paragraph No. 63 and denies that Plaintiff or any
23 member of the putative class is entitled to equitable, injunctive or statutory relief or any
24 other form of relief whatsoever.

25 64. The allegations in Paragraph No. 64 of the Complaint state conclusions of
26 law to which no response is required. To the extent a response is required, TD
27 Ameritrade denies the allegations in Paragraph No. 64.

28 65. The allegations in Paragraph No. 65 of the Complaint state conclusions of
law to which no response is required. To the extent a response is required, TD

1 Ameritrade denies the allegations in Paragraph No. 65.

2 66. TD Ameritrade denies the allegations in Paragraph No. 66 of the
3 Complaint.

4 TD Ameritrade denies that Plaintiff is entitled to a jury trial on all claims
5 presented in the Complaint.

6 TD Ameritrade denies all allegations not specifically admitted herein.

7 **AFFIRMATIVE DEFENSES**

8 In further answer to Plaintiff's Complaint, and as separate and distinct
9 affirmative defenses, Defendant alleges the following defenses:

10
11 AS A FIRST SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
12 Defendant alleges that the Complaint, and each and every claim for relief therein, fails
13 to state a claim upon which relief may be granted.

14 AS A SECOND SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
15 Defendant alleges that the Complaint, and each cause of action therein, fails to state
16 facts sufficient to constitute an individual cause of action against Defendant.

17 AS A THIRD SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
18 Defendant alleges that the Complaint, and each cause of action therein, fails to state
19 facts sufficient to constitute any class cause of action against Defendant.

20 AS A FOURTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
21 Defendant alleges that by reason of the conduct of Plaintiff, Plaintiff is estopped to
22 assert any right to relief.

23 AS A FIFTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
24 Defendant alleges that any act or omission giving rise to Plaintiff's action was in good
25 faith and that Defendant had reasonable grounds for believing that its acts or omissions
26 did not violate any statute, regulation and/or law.

27 AS A SIXTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
28 Defendant alleges that the damages for which Plaintiff seeks to hold Defendant liable

1 resulted in whole or in part from Plaintiff's acts or omissions, and Defendant is in no
2 way responsible for or liable to Plaintiff for his own wrongful or negligent acts or
3 omissions.

4 AS A SEVENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
5 Defendant alleges that the Complaint is barred, in whole or in part, because Defendant's
6 alleged practices referenced in the Complaint are not "unlawful" within the meaning of
7 Business & Professions Code §§ 17200, et seq.

8 AS AN EIGHTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
9 Defendant alleges that the Complaint is barred, in whole or in part, because Defendant's
10 alleged practices referenced in the Complaint are not "unfair" within the meaning of
11 Business & Professions Code §§ 17200, et seq.

12 AS A NINTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
13 Defendant alleges that the Complaint is barred, in whole or in part, because Defendant's
14 alleged practices referenced in the Complaint are not "fraudulent" within the meaning of
15 Business & Professions Code §§ 17200, et seq.

16 AS A TENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
17 Defendant alleges that Plaintiff's claims are barred, in whole or in part, by the
18 applicable statutes of limitations, including but not limited to, California Code of Civil
19 Procedure sections 335.1, 337, 338(a), 339, 340 and/or 343, and California Business &
20 Professions Code section 17208.

21 AS AN ELEVENTH SEPARATE AND DISTINCT AFFIRMATIVE
22 DEFENSE, Defendant alleges that Plaintiff has delayed inexcusably and unreasonably
23 in the filing of this action causing substantial prejudice to Defendant, and thus,
24 Plaintiff's claims are barred by the equitable doctrine of *laches*.

25 AS A TWELFTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
26 Defendant alleges that Plaintiff is not entitled to any penalty award under Section 203
27 of the California Labor Code since, at all times relevant and material herein, Defendant
28 did not willfully fail to comply with any provisions of the California Labor Code or

1 applicable wage order, but rather acted in good faith and had reasonable grounds for
2 believing that it did not violate the California Labor Code or applicable wage order.

3 AS A THIRTEENTH SEPARATE AND DISTINCT AFFIRMATIVE
4 DEFENSE, Defendant alleges that certain putative class members may have waived
5 and/or released some or all of the claims asserted in the Complaint.

6 AS A FOURTEENTH SEPARATE AND DISTINCT AFFIRMATIVE
7 DEFENSE, Defendant is informed and believes and thereon alleges that, by exercise of
8 reasonable efforts, Plaintiff could have mitigated the amount of damages he allegedly
9 suffered, but Plaintiff failed and/or refused and continues to fail and/or refuse, to
10 exercise reasonable efforts to mitigate his damages.

11 AS A FIFTEENTH SEPARATE AND DISTINCT AFFIRMATIVE
12 DEFENSE, Defendant alleges that Plaintiff's claims for injunctive relief are barred
13 because Plaintiff has an adequate and complete remedy at law and/or Plaintiff cannot
14 make the requisite showing to obtain injunctive relief.

15 AS A SIXTEENTH SEPARATE AND DISTINCT AFFIRMATIVE
16 DEFENSE, Defendant alleges that the Court lacks jurisdiction over Plaintiff's claims to
17 the extent one or more of the parties have entered into an agreement to individually
18 arbitrate all employment related claims and has waived his or her ability to pursue this
19 action as a class action.

20 FOR A SEVENTEENTH AFFIRMATIVE DEFENSE, Defendant alleges
21 that Plaintiff's claim for civil penalties is not cognizable under the facts of this case and
22 is otherwise barred by the Due Process Clauses of the Fifth and Fourteenth
23 Amendments to the United States Constitution and Article I, Section 7 of the California
24 Constitution.

25 FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE, Defendant alleges
26 that Plaintiff's claim for civil penalties is not cognizable under the facts of this case and
27 is otherwise barred by the Excessive Fines Clauses of the Eighth Amendment of the
28 United States Constitution and Article I, Section 17 of the California Constitution.

1 FOR A NINETEENTH AFFIRMATIVE DEFENSE, Defendant alleges that
2 the Complaint is barred, in whole or in part, because at all relevant times Plaintiff was
3 exempt from the requirements to pay overtime compensation and other wage and hour
4 requirements and restrictions under the California Labor Code, California Industrial
5 Welfare Commission Wage Orders and associated regulations, including without
6 limitation Cal. Labor Code § 515 and Title 8 of the California Code of Regulations §
7 11040(1)(A).

8 FOR A TWENTIETH AFFIRMATIVE DEFENSE, Defendant alleges that to
9 the extent that Plaintiff alleges that his job duties were primarily non-exempt in nature,
10 the duties that TD Ameritrade required and reasonably expected Plaintiff to perform
11 were primarily exempt in nature.

12 FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE, Defendant alleges
13 that Plaintiff is not entitled to recover punitive damages because such remedies are not
14 available as a matter of law in this action, and/or because Plaintiff has failed to allege
15 facts sufficient to state a claim for such damages, and the statutory requirements for an
16 award of punitive damages pursuant to California Civil Code § 3294 are not met.

17 FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE, Defendant alleges
18 that the claims for punitive damages, penalties and other exemplary remedies in the
19 Complaint are barred or limited by California law, the doctrine of implied statutory
20 preemption, the due process clauses of the Fifth and Fourteenth Amendments and other
21 constitutional and statutory protections.

22 FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE, Defendant alleges
23 that the Complaint and each of the causes of action contained therein is barred because
24 Plaintiff has suffered no damages or injury.

25 FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE, Defendant alleges
26 that the Complaint fails to state a claim for penalties under Labor Code § 226(e) because
27 TD Ameritrade's failure to keep adequate records, if any, was not knowing or
28 intentional.

1 FOR A TWENTY-FIFTH AFFIRMATIVE DEFENSE, Defendant alleges
2 that Plaintiff's prayer for relief under the California Unfair Competition law is barred,
3 in whole or in part, by unavailability of the relief requested, including without
4 limitation, the unavailability of any monetary relief other than restitution, such as
5 damages, penalties, disgorgement or attorney fees.

6 TD Ameritrade reserves the right to assert additional affirmative defenses
7 as they become known during the course of the litigation.

8
9 **PRAYER**

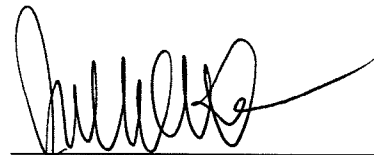
10 WHEREFORE, TD Ameritrade prays for relief as follows:

11 1. That Plaintiff takes nothing by his Complaint and that such Complaint be
12 dismissed with prejudice;

13 2. That TD Ameritrade recover its costs and attorneys' fees incurred herein
14 pursuant to relevant statutes, including without limitation, California Labor Code §
15 218.5; and

16 3. That the Court grant TD Ameritrade such other relief as it deems just and
17 proper.

18
19 DATED: June 10, 2008



JULIE L. TAYLOR
JULIE A. KOLE
KEESAL, YOUNG & LOGAN
Attorneys for Defendant
TD AMERITRADE, INC.

PROOF OF SERVICE

I, the undersigned, hereby declare that I am over the age of eighteen years, and I am not a party to the within action. My business address is Four Embarcadero Center, Suite 1500, San Francisco, CA 94111, and my telephone number is (415) 398-6000.

On the date indicated below, I served a true copy of the following document(s):

**TD AMERITRADE'S ANSWER TO COMPLAINT FOR DAMAGES, INJUNCTIVE
RELIEF AND RESTITUTION**

- ☒ **BY E-MAIL:** I caused such document(s) to be served electronically on all parties via the United States District Court's Northern District ECF e-filing system.
- ☒ Pursuant to California Rules of Court, Rule 201, and the Local Rules of the United States District Court, I certify that all originals and service copies (including exhibits) of the papers referred to herein were produced and reproduced on paper purchased as recycled, as defined by section 42202 of the Public Resources Code.

Executed on June 16, 2008 at San Francisco, California.


K'Ann M. Klein